IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 12780 of 2006

DATE OF DECISION:

Neeraj

..... PETITIONER

VERSUS

State of Haryana and others

.....RESPONDENTS

CORAM:- HON'BLE MR. JUSTICE M.M.KUMAR
HON'BLE MR. JUSTICE M.M.S. BEDI

PRESENT: Mr.Manoj Chahal, Advocate for the petitioner.

M.M.S.BEDI,J.

The petitioner being the son of Chander Shekhar, who died in harness while in service on 6.11.2002, has approached this Court under Article 226 of the Constitution for quashing orders Annexures P-2 and P-3 dated 14.9.2005 and 2.9.2005 passed by the Director General, Health Services, Haryana and Civil Surgeon, Bhiwani, respectively rejecting his claim for appointment on compassionate grounds under policy of the Government prevailing at the time of his father's death/ date of application.

The petitioner has claimed that his father was working as a Steno in the office of Chief Medical officer, Bhiwani. After his father's death on 6.11.2002, the petitioner applied for compassionate appointment on 17.12.2002. When no steps were taken by the respondents in the matter, a legal notice dated 22.7.2005 was served on the respondents. In response

to the legal notice, the petitioner was informed that he was not entitled for compassionate appointment in accordance with the policy/instructions issued by the Government of Haryana because his mother was already in Government service as Dresser in the Health Department. The petitioner claims that his rights for compassionate appointment are governed by Government Instructions dated 8.5.1995.

Learned counsel for the petitioner Shri Manoj Chahal has vehemently urged that vide clarification dated 8.5.1995 (Annexure P-4) the Government had reconsidered the matter regarding grant of compassionate appointment and had inter alia announced that if the spouse of the deceased Government employee was in Government service, it would not be a bar to the dependent of the deceased from seeking employment under the scheme if the other conditions of eligibility are fulfilled.

We have considered the submission made by the counsel for the petitioner in the light of the law laid down by Hon'ble the Supreme Court in the case of **Umesh Kumar Nagpal vs Stae of Haryana** (1994) 4 S.C.C. 138. In the aforesaid case, it has been clearly held as follows:-

> " As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interest of justice and to meet certain contingencies. One such exception is

> in favour of the dependents of any employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependents of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood."

The above said observation of Hon'ble the Supreme Court has been followed by this Court in a number of judgments upholding the decision of the State in rejecting the claim of compassionate appointment. So far as 2003 Rules are concerned, in **CWP No. 6176 of 2005 (Phoola Kumari Verma vs State of Haryana and another) decided on 25.4.2005**, the retrospective applicability of the Rules notified on 28.2.2003 was questioned. Placing reliance on the decision in the case of **Bijender Singh vs. State of Haryana and others (CWP No. 4190 of 2005) decided on 17.3.2005** and noticing the law laid down by Hon'ble the Supreme Court in **Umesh Nagpal's case (Supra)**, the contentions seeking compassionate appointment were rejected.

In view of the fact that the mother of the petitioner is already

working, it does not appear to be a case where the petitioner could claim right of appointment on compassionate grounds to tide over an emergent situation resulting from the loss of only bread earner of the family.

The writ petition is without merit and is accordingly dismissed.

(M.M.S.BEDI)
JUDGE

August 18, 2006
TSM

(M.M. KUMAR)
JUDGE